

May 24, 2017

Honorable Stacy Ruble
Secretary
Postal Regulatory Commission
901 New York Avenue, NW, Suite 200
Washington, DC 20268-0001

Dear Mr. Ruble:

Pursuant to 39 U.S.C. § 407(d)(2), the U.S. Postal Service (Postal Service) is providing copies of the following Data Sharing Agreements (DSAs) between the Postal Service and various foreign postal operators:

- Agreement for the Electronic Exchange of Customs Data, signed by the Postal Service January 13, 2017 (Jordan) [Attachment 2]
- Agreement for the Electronic Exchange of Customs Data, signed by the Postal Service August 17, 2015 (multilateral) [Attachment 3]¹
- Agreement for the Electronic Exchange of Customs Data, signed by the Postal Service May 21, 2014 (multilateral) [Attachments 4-13]
- Agreement for the Electronic Exchange of Customs Data, signed by the Postal Service April 16, 2014 (Brazil) [Attachment 14]

The Postal Service has determined that these DSAs, which govern the exchange of electronic data, should be treated as “commercial or operational contracts” triggering disclosure under Section 407(d)(2).² The Postal Service has marked the non-public versions of the documents as “Confidential” and “Non-Public” because the documents contain information considered confidential and commercially sensitive by the affected postal operators and the Postal Service.

The Postal Service considers certain portions of the documents to be protected by 39 U.S.C. § 410(c)(2) and thereby not subject to mandatory disclosure under the Freedom

¹ This multilateral DSA is coordinated by International Post Corporation (IPC), an intermediary that, among other services, facilitates the flow of electronic data among postal operators. In addition to the Postal Service, the designated operators of the following countries have signed this DSA: Austria, Australia, Belgium, Canada, Switzerland, Czech Republic, Germany, Estonia, Spain, France, Greece, Croatia, Hungary, Iceland, Italy, Luxembourg, Latvia, Malta, Netherlands, Norway, New Zealand, Poland, Portugal, Russia, Slovenia, and Slovakia. In this submission, the Postal Service is filing its signed copy of the DSA. It does not have copies of the signature pages of each of the other postal operators.

² The Postal Service is filing these DSAs after their effective dates because it initially concluded that they were outside the scope of the 39 U.S.C. § 407(d) filing requirement. Upon further review and analysis, it was determined that filing with the Commission is appropriate. Going forward, the Postal Service intends to file with the Commission any new DSA signed by the Postal Service with a foreign post before its effective date or as soon thereafter as practicable.

of Information Act (FOIA). Further, the documents contain the commercial information of multiple postal operators, and as such, certain portions of the instruments are subject to protection under Exemption 4 of the FOIA. Consequently, we have attached an application for non-public treatment of these documents under 39 C.F.R. § 3007.21. See Attachment 1. In addition, we respectfully request that the Postal Regulatory Commission coordinate with us in the event that the documents become subject to a FOIA request, so that we can engage in appropriate consultations with the affected postal operators.

Please feel free to contact me if further information would be helpful.

Sincerely,

A handwritten signature in black ink that reads "Anthony Alverno". The script is cursive and fluid, with the first name and last name clearly distinguishable.

Anthony Alverno
Chief Counsel,
Global Business and Service Development

Enclosures

ATTACHMENT 1**APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR
NON-PUBLIC TREATMENT OF MATERIALS**

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,¹ the United States Postal Service (Postal Service) hereby applies for non-public treatment of the enclosed Data Sharing Agreements (“DSAs”) among the Postal Service and multiple postal operators. The Postal Service is transmitting these DSAs to the Postal Regulatory Commission (Commission) in accordance with 39 U.S.C. § 407(d). Redacted versions of the DSAs are enclosed as Attachments 2-5. The Postal Service hereby furnishes below the justification required by 39 C.F.R. § 3007.21(c) for this Application.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

The materials designated as non-public consist of information of a commercial nature that would not be publicly disclosed under good business practices as well as information that may impact law enforcement interests. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).² Because the portions of the materials that the Postal Service seeks to file under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its

¹ PRC Order No. 225, Final Rule Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

² In appropriate circumstances, the Commission may determine the proper level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that “likely commercial injury” should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

determination that these materials are exempt from public disclosure and to grant its application for their non-public treatment.

(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

In the case of agreements such as the ones transmitted here, the Postal Service believes that the postal operators that are parties to the agreements are the only third parties with a proprietary interest in the materials. The Postal Service identifies as an appropriate contact person Ms. Guadalupe Contreras, Acting Manager, Strategic Planning & Business Analytics. Ms. Contreras's phone number is (202) 268-4598, and her email address is guadalupe.n.contreras@usps.gov. The Postal Service has already informed the participating postal operators, in compliance with 39 C.F.R. § 3007.20(b), about the nature and scope of this filing and about the postal operators' ability to address any confidentiality concerns directly with the Commission.³

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

Pursuant to 39 U.S.C. § 407(d), the Postal Service is transmitting the DSAs with foreign postal operators, certain of which are agencies of a foreign government. The DSAs include information concerning the transmission of electronic data between the Postal Service and foreign postal operators. Such electronic data is used by law enforcement entities to ensure compliance with various U.S. laws and regulations,

³ The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's filing might be construed as beyond the scope of the Commission's rules, the Postal Service respectfully requests a waiver to designate a Postal Service employee as the contact person under these circumstances.

including those relates to imports, exports, and mailability. The Postal Service may also use the electronic data for operational and customer services purposes. The redactions applied to the DSAs protect the specifics of the electronic transfer of data between the Postal Service and its counter-parties.

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

If the portions of the DSAs that the Postal Service determined to be protected from disclosure due to their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it could suffer commercial harm. The details of electronic data transfers — including the content, timing, and method of such transfers — are commercially sensitive, and would not be disclosed under good business practices. If this information were made public, competitors of the Postal Service and its counter-parties, including private entities and other postal operators not a party to these DSAs, could use the information to identify strengths and vulnerabilities in operations and customer service. Postal operators not currently a party to any of these DSAs also might use the information to their advantage in negotiating future DSAs with the Postal Service.

Additionally, if the redacted information were to be disclosed publicly, it would assist entities seeking to circumvent law enforcement efforts to ensure compliance with various U.S. laws and regulations, including those governing imports, exports, and mailability.

The Postal Service considers the use of the redacted information to gain commercial advantage and to circumvent law enforcement to be highly probable outcomes that would result from public disclosure of the redacted material.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Harm: Public disclosure of the redacted terms of the DSAs would provide other foreign postal operators negotiating power to obtain similar terms from the Postal Service.

Hypothetical: The negotiated terms are disclosed publicly on the Postal Regulatory Commission's website, which another postal operator sees. That other postal operator then uses that publicly disclosed information to insist that it must receive similar, or better, terms when negotiating its own DSA with the Postal Service.

Harm: Public disclosure of redacted information in the DSAs would be used by competitors to the detriment of the Postal Service.

Hypothetical: A competing delivery service obtains unredacted versions of the DSAs from the Postal Regulatory Commission's website. The competitor analyzes the DSAs to determine strengths and weaknesses of the Postal Service's operational and customer service abilities. The competing delivery service then targets the area of weaknesses to gain leverage in the marketplace, thereby significantly cutting into the revenue streams upon which the Postal Service relies to finance provision of universal service.

Harm: Public disclosure of information in the DSAs would be used detrimentally by the foreign postal operators' competitors.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the DSAs from the Commission's website. The competitor analyzes the DSAs to determine strengths and weaknesses of the foreign postal operators' operational and customer service abilities. The competitor then targets the

areas of weakness to gain leverage in the marketplace, thereby significantly cutting into the revenue streams of the foreign postal operators.

Harm: Public disclosure of information in the DSAs would be used to circumvent U.S. and foreign laws and regulations.

Hypothetical: Entities or individuals seeking to circumvent U.S. laws and regulations or those of the Postal Service's counterparties obtain an unredacted copy of the DSAs from the Commission's website. Those entities or individuals then use the information regarding electronic data transfer to circumvent efforts by domestic or foreign law enforcement agencies to enforce laws and regulations governing, *inter alia*, imports, exports, and mailability.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international delivery products (including both private sector integrators and foreign postal operators), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service (including other postal operators) should not be provided access to the non-public materials.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service respectfully requests that the Commission grant its application for non-public treatment of the identified materials.